IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 820 of 1989

with

CRIMINAL REVISION APPLICATION No 394 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

DAYALBHAI CHHAGANBHAI

Appearance:

1. Criminal Appeal No. 820 of 1989

MR KT DAVE, APP for Appellant

MR MJ BUDDHBHATTI for Respondent No. 1

2. Criminal Revision ApplicationNo 394 of 1989

MR BJ JADEJA for Applicant

MR MJ BUDDHBHATTI for Respondent No.1.

MR KT DAVE, APP for Respondent No.2

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 23/03/98

CAV COMMON JUDGEMENT

This appeal by the State is directed against the order of acquittal dated 17.8.1989 passed by the Ld. Judicial Magistrate (First Class), 4th Court, Jamnagar in Criminal Case No. 627/87 whereby the Ld. Judge acquitted the accused Dayaljibhai Chhaganbhai under S.320(8) of the Cr.P.Code on the basis of compromise arrived at between the parties. Against the same order, Administrative Officer, Municipal School Board, Jamnagar, preferred Revision Application for quashing and setting aside the impugned order of acquittal. Since both the matter arise out of the same order, the same are heard and disposed of by this common judgment.

2. The brief facts leading to the present case are that an offence came to be registered against the respondent-accused on the strength of a complaint lodged by the original complainant namely chaitanyakumar Mukundray Jani. It was alleged, inter alia, that the respondent-accused was in the service of the Municipal School Board and was the Head Master of School No.14 in Jamnagar. Though he came to be retired on 29.11.1986 and his charge was handed over, on the next working day i.e. on 1.12.1986, gates of the school were found locked and respondent -accused was found in the compound and he refused to open the door. Original complainant Chaitanyakumar Jani, at the relevant time, was the Administrative Officer (Shashana-Adhikari) who also came there and found that respondent-accused was not prepared to open the gate. So, he informed the Chairman of the School Board and on his advice filed the complaint. Respondent accused came to be tried by the Ld. Judicial Magistrate, First Class, Jamnagar in Criminal Case No.627/87. Pending the trial, both the parties submitted a pursis before the trial court stating that they had compounded the offence and requested to pass necessary orders. On the basis of said pursis, the ld. Magistrate passed impugned order as aforesaid.

3. The grievance of the applicant in Revision Application i.e. Administrative Officer, Municipal School Board, Jamnagar is that the original complainant Chaitanyakumar Jani had no authority whatsoever to compound the offence because on the day on which offence came to be compounded, original complainant was no more Administrative Officer of that very School and was transferred elsewhere. It was also stated that original complainant had filed complaint at the instance of the School Board and he cannot be said to be a person aggrieved by the offending act and, therefore, ld.

Magistrate ought not to have recorded the compromise tendered before him on 7.8.1989 and ought not to have acquitted the accused and further that the order of acquittal recorded on the strength of compromise, is not in accordance with the provisions of S.320(8) of the Cr.P.Code.

4. I have gone through the order passed by the Ld. Magistrate. I have gone through the record and proceedings of the case. It transpires from the record that original complainant himself had informed the higher officers about the alleged offending act of the accused and had filed complaint. Whether in such cases, criminal proceedings should be initiated or not is altogether a different question of scrutiny. However, I am not inclined to accept the argument that in absence of resolution of the School Board, original complainant had any authority to compound the offence with the accused. He was the person aggrieved at the relevant time and he was authorised and competent to put the criminal law in motion irrespective of the formal approval by the School Board. It is not in dispute that the respondent had retired as a Principal on 29.11.1986 and charge of the post was handed over. Respondent was to retire on the next day i.e. on 30th November 1986, but as it was Sunday and was holiday for the school, he was made to retire on 29.11.1986 by the Administrative Officer. The incident in qustion took place on 30st November 1986. What had transpired in between is not stated in the complaint. It appears that at the relevant time, the respondent-accused obtained temporary injunction from the Civil Court against his retirement and he entered the school premises on 1.12.1986. Thus, it appears that civil dispute was pending between the parties in the competent civil court. Under the circumstances, in my opinion, the order of acquittal cannot be reversed merely on a technical ground raised by the State and/or School Board. Even if it is believed for the sake of arguments that the ld. Trial Judge has erred in compounding the offence and acquitting the accused on 17.8.1989. It would not be justified to remand the matter back for retrial after a lapse of about 12 years more particularly when the accused is made retired in the year 1989. The exercise of sending the accused back to face retrial would not be in the interest of all concerned.

5. For the reasons stated above, there is no substance in this appeal and hence, appeal is hereby dismissed. The impugned order dated 17.8.1989 passed by 4th Jt. Judicial Magistrate (F.c.) Jamnagar in Criminal Case No. 627/87 is hereby confirmed.

6. In view of the dismissal of the Criminal Appeal, Criminal Revision Application No. 394/89 does not survive. Hence, Criminal Revision Application stands disposed of accordingly.

23.03.1998 [C.K.BUCH, J]

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